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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WILLIAM WOMACK,

9 Petitioner,

10 v.

11 DONALD R. HOLBROOK,

12 Respondent.

CASE NO. C17-5822 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATIONS

13 This matter comes before the Court on the Report and Recommendations
14 (“R&Rs”) of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkts. 35,
15 36, and Petitioner William Womack’s (“Womack”) objections to the R&Rs, Dkt. 39.

16 On February 1, 2019, Judge Fricke issued the R&Rs recommending that the Court
17 deny Womack’s motion to supplement the record, Dkt. 35, and deny Womack’s petition
18 for procedural and substantive reasons, Dkt. 36. On April 4, 2019, Womack filed
19 objections. Dkt. 39.

20 The district judge must determine de novo any part of the magistrate judge’s
21 disposition that has been properly objected to. The district judge may accept, reject, or
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1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 **A. Exhaustion**

4 The R&R addressing Womack's petition concludes that seven of Womack's
5 eleven grounds for relief are unexhausted and procedurally barred. Dkt. 36 at 5–6.
6 Womack objects arguing that he properly raised these claims before the Washington
7 Supreme Court. Dkt. 39 at 2–3. The Court agrees with the R&R that at most Womack
8 provided a summary reference of these claims, which does not constitute a full and fair
9 presentation for review. *Insyxiengmay v. Morgan*, 403 F.3d 657, 667–68 (9th Cir. 2005).
10 Therefore, the Court adopts the R&R on this issue.

11 **B. Merits**

12 The R&R recommends that the Court deny most of Womack's remaining claims
13 on the merits and that the Court find that certain aspects of some of these claims are
14 unexhausted and procedurally barred. Dkt. 36 at 14–29. Although Womack provides
15 voluminous objections, he fails to establish any error in the R&R. Womack does identify
16 one inconsistency in the R&R regarding Womack's claim for ineffective appellate
17 counsel. The R&R rejects Womack's claim that counsel was deficient for failing to raise
18 Womack's additional grounds for relief before the Washington Supreme Court because
19 Womack raised the issues himself. Dkt. 36 at 28–29. This is inconsistent with a finding
20 that the additional grounds are unexhausted because they were not properly raised.
21 Womack, however, fails to establish that the Washington Supreme Court's rejection of
22 this ineffective assistance claim was contrary to law because the court stated that his

1 additional grounds for relief were “waived, unreviewable, or meritless.” Dkt. 11, Exh. 17
2 at 4–5. Thus, Womack has failed to show deficient performance in failing to raise such
3 meritless claims.

4 **C. Supplement the Record**

5 Although Womack objects to the R&R denying his motion to supplement the
6 record, he fails to provide any relevant argument identifying an error in the R&R.

7 Therefore, the Court having considered the R&Rs, Womack’s objections, and the
8 remaining record, does hereby find and order as follows:

- 9 (1) The R&Rs are **ADOPTED**;
- 10 (2) Womack’s Petition is **DENIED**;
- 11 (3) A Certificate of appealability is **DENIED**; and
- 12 (4) The Clerk shall enter a **JUDGMENT** and close the case.

13 Dated this 11th day of June, 2019.

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16 BENJAMIN H. SETTLE
United States District Judge

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